

REAL PROPERTY ACQUISITION

I. REGULATORY REQUIREMENT

Whenever any portion of a project is funded with Community Development Block Grant (CDBG) funds, the acquisition of any property associated with the project, must be conducted in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, commonly referred to as the Uniform Act or the URA. A glossary of key terms defined in the URA and used in this chapter is provided in Section VI of this chapter.

The URA applies to the following acquisition types: fee simple title, the acquisition of fee title that is subject to retention of a life estate or a life use, acquisition by leasing where the lease term, including option(s) for extension, is 50 years or more, and the acquisition of permanent easements.

The provisions of the chapter **do not** apply to the acquisition of a temporary easement.

The major exceptions to the URA, which may exempt some CDBG acquisition activities from URA requirements, are listed in Form 34, When the Model Uniform Relocation Act (URA) Does Not Apply.

The URA also defines requirements pertaining to the relocation and displacement of persons or businesses. According to Section 104(d)(1) of the Housing and Community Development Act of 1974 as amended, all recipients of CDBG funds must enact a Residential Anti-displacement and Relocation Assistance Plan, approved by the City Council or Quorum Court, prior to commencement of acquisition activities. A Sample Residential Anti-displacement and Relocation Assistance Plan is provided as Form 35 to this chapter.

Note for all projects that may have relocation or displacement activities: To ensure that accurate documentation is collected and proper compensation is provided to displaced/relocated persons and businesses, grantees should contact the Arkansas Economic Development Commission grants manager before conducting any acquisition activities which appear to require the displacement or relocation of persons or businesses. Failure to do so may delay the start of construction and could result in termination of the project.

II. PROCEDURES FOR ACQUIRING PROPERTY

The three most commonly used methods for acquiring property are donations, fee simple purchases and condemnations. Prescriptive taking is another lesser-used method of acquisition which is sometimes used by cities and counties to acquire easements adjacent to streets and roadways. Costs associated with prescriptive takings are ineligible for

grant funding. The grantee should contact the attorney of record for specific information regarding prescriptive taking.

The following sections provide a brief description of the activities involved in the acquisition of property. Activities common to all three methods identified above are listed in Section A and those specific to each method are described in Sections B-D.

A. Common Activities for All Acquisition Methods

The basic acquisition steps described below apply to donation, fee simple purchase and condemnation:

1. Determine which properties will be impacted by the project's construction activities. The project engineer or architect will usually provide a preliminary location or plat map indicating the location of the proposed improvements within the grantee's jurisdiction.
2. Determine property ownership for all properties requiring fee simple purchases or easements. Normally, grantees will procure an abstractor who will provide a legal description of the affected properties and the names and addresses of the property owners from the preliminary location map. (See the Procurement Chapter of the Administrative Procedures Manual for abstractor procurement requirements.)
3. Obtain title evidence to verify legal ownership of affected properties. (Normally such evidence is a certification by an abstractor but copies of deeds or proof of property tax payments from the applicable county will suffice.)
4. Notify affected property owners of the grantee's intent to acquire easements and/or parcels for the project. For parcel acquisition, notify property owners in accordance with Form 36, Sample Notice of Intent to Acquire and Rights Under the Uniform Relocation Act for Fee Simple Purchases. For easement acquisition, notify property owners in accordance with Form 37, Sample Notice of Intent to Acquire and Rights Under the Uniform Relocation Act for Easements. Form 38, Acquisition of Easements and Fee Simple Titles Under the Uniform Relocation Act and the Rights of the Property Owner must accompany both Forms 36 and 37.
5. Determine which properties will require appraisals and review appraisals. Appraisals are required whenever
 - A property's fair market value (FMV) exceeds \$2500.
 - Determination of valuation is complex.
 - An appraisal is requested by the property owner.

For those properties which will not be appraised, proceed to Section II. B. or II. C. below depending upon whether acquisition will be by donation or fee simple purchase.

Note: Property owners donating property may waive their rights requiring appraisals. See Section II. B. 2. Below.

6. Notify property owners of appraisal date (Form 39), Sample Notice of Appraisal and Right to Accompany Appraiser
7. Complete the appraisal. See the Procurement Chapter of the Administrative Procedures Manual for instructions regarding the procurement of appraisers and review appraisers.

Sections B through D describe additional required activities which must be completed in accordance with the specific method of acquisition.

B. Donations

Property owners, **after** being notified of their rights under the URA, may elect to donate all or any portion of their property for less than FMV. The following additional steps must be followed for property donations:

1. Determine which, if any, property owners wish to donate their property.
2. Request the donating property owners to sign a Waiver of Rights and Benefits of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended form Form 40.
3. Prepare documents conveying easements and parcels to the acquiring entity. Form 41 is a sample easement form. Warranty deeds are required for the donation of a parcel. An abstractor can prepare and coordinate the execution of a warranty deed.
4. Review warranty deeds and easements to ensure that they are complete and ready to file.
5. File easements and warranty deeds with the county clerk's office.
6. Retain all documentation in the grantee's file in accordance with the Recordkeeping Chapter of the ACEDP Administrative Procedures Manual.

C. Fee Simple Purchases

1. Prepare and send to applicable property owner(s) a Written Offer of Just Compensation (Form 42) which defines the property's FMV as established by the grantee. If the FMV of the property is less than \$2500, the grantee may have a real estate professional or other person familiar with property values in the grantee's jurisdiction establish a FMV based on recent sales prices or assessed values. Documentation of such calculated FMV must be provided in writing (Form 43, Statement of the Basis of Just Compensation.). It is suggested that grantees discuss calculation of FMV by means other than appraisal with the Arkansas Economic Development Commission grants manager prior to property valuation.
2. If the FMV offered is not accepted by the property owner, then the grantee must negotiate with them to reach an acceptable amount for compensation. It is the policy of the grants division to authorize grantees to negotiate amounts up to \$2,000 above the FMV of parcels if necessary to avoid condemnation. If the property owner is still unwilling to sell, then the grantee must either select another site or condemn the property according to the condemnation guidance provided in Section D.
3. Complete negotiations and prepare a Statement of Settlement Cost, Form 44.
4. Procure a surveyor to conduct a survey of the property to be acquired. See the Procurement Chapter of the ACEDP Administrative Procedures Manual for information regarding procurement of surveyors.
5. Prepare easements and/or warranty deed(s).
6. Review warranty deeds and/or easements to ensure that they are signed by all legal property owners and are consistent with legal descriptions of property.
7. File easements and warranty deeds with the county clerk's office.
8. Retain all documentation in the grantee's files in accordance with the Recordkeeping Chapter of the ACEDP Administrative Procedures Manual.

D. Condemnations

Condemnation is the legal process by which a fee simple title or easement to property is acquired through the process of eminent domain. The initial steps involved in condemnation are the same as those in donations or purchases except that instead of arriving at a voluntary purchase, the entity must acquire the

property by filing condemnation against the property owner because a mutually agreed upon price cannot be determined. Condemnation is also necessary when a property owner cannot be located or when other legal constraints preclude voluntary acquisition. Grantees are advised to contact their attorney of record when condemnation is anticipated.

The following additional steps are required when acquiring property or easements through condemnation:

1. Formally terminate negotiations in writing.
2. File condemnation suit with the appropriate court in accordance with state law.
3. Deposit, as directed by the court, the amount of court-determined just compensation in a non-interest bearing escrow account.
4. Proceed with payment to the property owner in accordance with court instruction.
5. Close the escrow account as soon as the condemnation suit is settled and compensation is disbursed. Contact the grants division grants manager regarding disposition of this account if it is still open at the time of project closeout.

III. RECORDKEEPING REQUIREMENTS

A. General Acquisition File

The following documents must be in the grantee's **General Acquisition File** and available for review by the grants division grants manager at the time of monitoring:

1. A location or plat map of the project area showing the approximate location of each parcel and easement, cross-referenced to the Site Acquisition Report, Form 46 (See Number 3 below). This may be the map used by the abstractor to identify property owners.
2. A letter to the grants division confirming completion of acquisition activities. (See Form 45 for a sample letter.) This letter must be received prior to advertisement for construction bids.
3. A Site Acquisition Report or an equivalent form documenting completion of all URA-required activities during acquisition of each parcel and easement. Form 46 is a sample Site Acquisition Report that compiles data for acquisition activities involving donations, purchases and condemnations.

4. A Residential Anti-displacement and Relocation Assistance Plan (Form 35), enacted by the grantee's city council or quorum court.

B. Parcel Specific Files

Once grantees has determined who the affected property owners are, they must prepare a separate file for each parcel to be acquired. (Parcels owned by the same person may be in the same file, but each easement or parcel must be listed separately on the Site Acquisition Report. Additionally, each easement or warranty deed must be contained within the file). Each file **must** contain the following items unless noted otherwise.

1. Common Documents

- a. A copy of the "Notice of Intent to Acquire"... letter provided to the to property owner (See Forms 36 and 37) for letters specific to fee simple titles and easements respectively) with the attached Acquisition of Easements and Fee Simple Titles Under the Uniform Relocation Act and the Rights of the Property Owner (Form 38).
- b. Title evidence for each parcel or easement. (Documentation may be in the form of abstractor certification, a copy of the warranty deed from the property owner or verification of property tax payment.)
- c. A copy of the Notice of Appraisal and Right to Accompany Appraiser letter, if applicable, sent to the property owner (Form 39). (Required to be in the file for all properties which are appraised.)
- d. Evidence of receipt of the above letter (return receipt green card from the post office or, if hand delivered, a signed statement of receipt).
- e. A copy of the appraisal, if applicable, or Statement of the Basis of Just Compensation (Form 43), with supporting valuation documentation, to determine the property's FMV if not determined by appraisal.

Any value determination not based upon appraisal must be prepared by someone knowledgeable about real estate in the area such as a real estate agent or a banker. The statement may be a brief summary of recent transactions on which the estimate of FMV was based.
- f. A copy of the review appraisal which is required for all appraised properties.
- g. If title to property is being acquired by the grantee, a copy of the executed and filed warranty deed and title insurance.

- h. A copy of the executed and filed easement, if applicable.
- i. A Notice of Intent Not to Acquire letter to the property owner notifying them of the determination not to acquire, if applicable (Form 48). This is required if the property was included on the original Site Acquisition Report but was ultimately not acquired.

2. Donations

In addition to the items listed in Section III. B. 1. above, the parcel specific file for donated properties must contain a copy of the form Waiver of Rights and Benefits of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended from the property owner.

3. Purchases

In addition to the items listed in Section III. B. 1. above, the parcel specific file for purchased properties shall contain the following items:

- a. Written Offer of Just Compensation (Form 42)
- b. The Statement of Settlement Cost to be paid (Form 44)
- c. A two-sided copy of the canceled check for purchased property
- d. A copy of metes and bounds survey for the acquired property

4. Condemnations

In addition to the items listed in Section III. B. 1. above, the parcel specific file for condemned properties shall contain the following items:

- a. Evidence of unsuccessful negotiation. (Memo to file of conversations with property owner or written refusal from property owner or other evidence that property owner is unwilling to sell at price offered.)
- b. A letter informing the property owner of termination of negotiations and commencement of condemnation.
- c. Copy of court documents including filing and judgment papers.

IV. ARKANSAS ECONOMIC DEVELOPMENT COMMISSION POLICIES AFFECTING ACQUISITION

1. All acquisition activities, including condemnation filings, must be 100 percent complete prior to construction bid advertisement unless written permission is received from the grants division. All condemnation suits must be filed prior to bid advertisement, but may be pending court decision.
2. Procurement of all professional services needed to complete acquisition activities must be done in accordance with grants division Procurement procedures.
3. Costs for professional services must be reasonable. There are no set maximum costs for these professional services. However, if the cost of the service is excessive, grant funds may not be used to pay the portion determined to be excessive. An estimate of reasonable cost will be determined during grant budget development. If anticipated costs will exceed this budget, you must contact the grants division grants manager for approval prior to contract execution.
4. Grants division funds may not be spent for prescriptive takings or other costs associated with platting city or county roads, etc.
5. To meet minimum requirements for a donation, an easement description may be defined as "parallel and adjacent to _____," if the required easement runs along an identified state or county highway or a city street. Because a metes and bounds survey is not required for this type of description, the grants division will not permit any grant funds to be used to pay for descriptions or surveys in excess of this standard. However, all purchases of property (easement or fee simple) must have a metes and bounds survey completed.
6. Proof that a Notice of Intent to Acquire and Rights Under the Uniform Relocation Act (Forms 36, 37 and 38) was sent to all property owners must be in the form of a return receipt "green card" from the post office or a signed receipt for a hand delivered notice. (See Form 49 for a Sample Receipt of Information Form.)
7. Grant funds may only be used to pay legal fees when the grantee is forced to condemn property. The attorney must be procured in accordance with state law.
8. When the property owner is unwilling to sell, the grantee is authorized to offer the property owner **up to** \$2,000 above the appraised FMV per fee simple parcel. If the owner is still unwilling to sell, the grantee must file a condemnation suit or select another site.
9. Should the property owner provide a second appraisal which is higher than the appraisal or review appraisal, the grantee shall have the review appraiser review the property owner's appraisal to determine if something was overlooked by the

original appraiser. If the review appraiser acknowledges an error was made, the grantee may modify the offer only to correct errors. A **detailed** appraisal and review appraisal are required for all fee simple parcel purchases exceeding \$2,500.

10. Use of public rights-of-way not held by the grantee is discouraged by the grants division. Grantees proposing use of such rights-of-way must inform the grants division of this decision prior to issuance of the acquisition complete letter. Any future costs to relocate improvements constructed in such rights-of-way shall be the responsibility of the grantee and not the grants division.
11. Grantees are permitted to conduct public meetings for the purposes of notifying property owners of their rights under the URA and for obtaining Waiver of Rights... forms and signed easements. This method is encouraged; however, property owners who do not choose to attend this meeting must still be notified of their rights under the URA through mail or direct contact.
12. If a project is funded with grants division and United States Department of Agriculture Rural Development funds, all acquisition costs must be budgeted from grants division funds.
13. Grantees must own title to or have legal documentation of intent to purchase all land and the buildings erected or improved thereon, if CDBG funds are used for building construction or rehabilitation. Grantees do not have to own title to private residences being rehabilitated or connected to utilities.
14. If Economic Development Set-Aside (EDSA) funds are used for infrastructure projects, then acquisition activities must be conducted in accordance with this chapter. However, if EDSA funds are being used for a loan to an industry, acquisition activities may be exempt if the requirements of 49 CFR 24.101(a)(2) are met. (See Form 34, When the Uniform Relocation Act Does Not Apply regarding exemptions.) If these conditions cannot be met, then no URA exemption may be granted. In order to claim exemption from the URA, the following documents must be prepared:
 - a. Notice to the property owner from the company that the owner's property will not be acquired if an amiable agreement is not reached
 - b. A determination of the FMV of the property

V. SPECIAL REQUIREMENTS OF THE UNIFORM RELOCATION ACT

A. Notices to Property Owners (49 CFR 24.5)

All notices to property owners must be hand delivered and signed for (Form 48) or delivered return receipt requested by the post office.

B. Qualifications of Appraisers (49 CFR 24.103(d))

It is desirable to use an appraiser who belongs to the American Institute of Real Estate Appraisers (Member of the American Institute, MAI) or the Society of Real Estate Appraisers (SREA) whose qualifications and experience are consistent with the type of appraisal procured, i.e., consistent with the level of difficulty of the appraisal assignment.

C. Minimum Contents of a Detailed Appraisal (49 CFR 24.103)

At a minimum, the detailed appraisal must give

1. The purpose and/or function of the appraisal, a description of the property being appraised, and a statement of the assumptions and limiting conditions of the appraisal.
2. An adequate description of the physical characteristics of the property being appraised (and, in the case of partial acquisition, an adequate description of the remaining property); a statement of the known and observed encumbrances, if any; title information; location; zoning; present use; an analysis of highest and best use; and at least a five-year sales history of the property.
3. All relevant and reliable approaches to value consistent with commonly accepted professional appraisal practices. When sufficient market sales data are available to reliably support the FMV for the specific appraisal, the appraiser, at his discretion, may require only the market approach. If more than one approach is utilized, there shall be an analysis and reconciliation of approaches to value that are sufficient to support the appraiser's opinion of value.
4. A description of comparable sales, including a description of all relevant legal, physical, and economic factors such as parties to the transaction, source and method of financing, and verification by a party involved in the transaction.
5. A statement of the value of the real property to be acquired and, for partial acquisition, a statement of the value of the damages and benefits, if any, to the remaining real property.
6. The effective date of valuation, date of appraisal, signature, and certification of the appraiser.

D. Requirements of a review appraisal

1. A qualified reviewing appraiser shall examine all appraisals to assure that they meet applicable appraisal requirements and shall, prior to acceptance,

seek necessary corrections or revisions. Before acceptance of an appraisal, the review appraiser must determine that the appraiser's documentation, including valuation data and the analysis of that data, demonstrates the soundness of the appraiser's opinion of value.

2. If the reviewing appraiser is unable to approve or recommend approval of an appraisal as an adequate basis for establishment of the offer of just compensation, and it is determined that it is not practical to obtain an additional appraisal, the reviewing appraiser may develop appraisal documentation and determine or recommend FMV.
3. The review appraiser's certification of the recommended or approved value of the property shall be set forth in a signed statement which identifies the appraisal reports reviewed and explains the basis for such recommendation or approval. (For an uncomplicated valuation process, the reviewer's endorsement of the appraisal report will satisfy this requirement.) Any damages or benefits to any remaining property shall also be identified in the statement.

VI. GLOSSARY OF TERMS RELATED TO THE UNIFORM RELOCATION ACT

Agency - Any grants division or political subdivision of a state or any person (individual, family, partnership, corporation, or association) who has the right to acquire property by eminent domain under state law.

Appraiser - A qualified person legally procured to make an appraisal to ascertain and state the true value of goods or real estate.

Appraisal - A written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information.

Acquisition - The act of acquiring real property (easements or fee simple).

Condemnation - The process of taking private property for public use by eminent domain.

Easement - A permanent interest which one person or entity has in another's land.

Fair Market Value - The price property will bring in a competitive market under conditions requisite to a fair sale, which would result from negotiations between a buyer and seller, each acting prudently and wisely, and without pressure or undue influences.

Federal Assistance - A grant, loan, or contribution provided by the United States, except any federal guarantee or insurance and any interest reduction payment to an individual in connection with the purchase and occupancy of a residence by that individual.

Fee Simple Title - An absolute ownership of land, clear of any condition, limitation, or restriction.

Just Compensation - A fair and reasonable payment being not less than fair market value.

Parcel - A tract or plot of land. (An easement or a fee simple title purchase is a parcel.).

Person - Any individual, family, partnership, corporation or association.

Prescriptive Easement - A right to use another's property which is not inconsistent with the owner's rights and which is acquired by a use, open and notorious, adverse and continuous for the statutory period (i.e. seven years). To a certain extent, it resembles title by adverse possession but differs to the extent that the adverse user acquires only an easement and not title. To create an easement by "prescription," the use must have been open, continuous, exclusive, and under claim of right of statutory period.

Program or Project - Any activity or series of activities undertaken by a federal agency or with federal financial assistance received or anticipated in any phase of an undertaking in accordance with the federal funding agency guidelines.

Property - Any kind of permanent interest including title, permanent or temporary construction easements, long term leases (50 years or more) and rights-of-way of real estate.

Review Appraisal - A written assessment of the adequacy of (1) an appraiser's supporting data, (2) appraisal procedures used and (3) the soundness of the appraiser's opinion of fair market value. It must also include the reviewer's recommendation of the fair market value of the subject property. (Form 51).